IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1855 OF 1988
With
FIRST APPEAL NO. 1856 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MINOR KOKILABEN S. PATEL THROUGH GUARDIAN NO.5, DHULIBEN & ORS. - Respondent(s)

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Appearance :
Ms. Jyoti Mehta for Appellant(s).
Though the name of Shri A.J. Patel is shown for Respondent Nos.1 – 7 in First Appeal No.1855 of 1988 and for Respondent Nos.1, 2 and 3 in First Appeal No.1856 of 1988.
None for other Respondents.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

COMMON ORAL JUDGMENT

The appellant-Gujarat State Road Transport Corporation, the owner of the vehicle, being aggrieved by the award dated 30th April, 1988 passed by the learned Motor Accident Claims Tribunal (Main), Sabarkantha at Himmatnagar in M.A.C.P. Nos.342 of 1984 and 343 of 1984, has filed these two appeals, being First Appeal Nos.1855 of 1988 and 1856 of 1988. In First Appeal No.1855 of 1988, against the award of Rs.3,90,000/-, the Gujarat State Road Transport Corporation ("the Corporation" for short) has confined its claim to Rs.1,95,000/-, while in First Appeal No.1856 of 1988, against the total award of Rs.1,52,500/- the Corporation is confining its liability to Rs.69,000/- only.

2. As the awards in their totality are not in challenge before this Court, but, only the monetary liability to some extent is sought to be avoided, it is not necessary for this Court to refer to the facts, which led to the accident, etc.

3. This Court would be required to consider that whether the learned Tribunal was justified in awarding the amount to the extent under challenge.

4. Ms. Jyoti Mehta, learned Counsel for the appellant, after

taking me through the evidence, submitted that the learned Tribunal below was unjustified in holding that the income of the deceased in First Appeal No.1855 of 1988 could be Rs.60,000 - Rs.80,000. According to her, most of the income of the deceased was from agriculture and as the land is still available with the family, such a huge award could not be made. It is to be seen in the said matter that the learned Tribunal, despite holding that the yearly income of the deceased could be Rs.60,000/- to 80,000/-, did not award on basis of that income. The learned Tribunal has held that the dependency could be calculated at Rs.1,800/- per month or Rs.21,600/- per year. This amount would be about 1/3rd of Rs.60,000/- or 1/4th of Rs.80,000/-. Under the circumstances, even if most of the agricultural income is put outside the consideration, then too, this Court would be justified in presuming and holding that the yearly income of the deceased could be somewhere around Rs.30,000/- and if that be so, the dependency at Rs.21,600/- cannot be held to be on the higher side.

5. It was then contended that the learned Tribunal below erred in awarding a sum of Rs.30,000/- under the head of loss to the jeep. It is submitted that the claimants must have claimed the amount from the Insurance Company, therefore, such amount could not be awarded in favour of the claimants/owner of the jeep. It has not come on the records that the insured or the claimants have received any amount from

the Insurance Company. In absence of such positive evidence, it cannot be presumed that the insured or the present claimants have received some amount from the Insurance Company. Even otherwise, the appellant-Corporation, being a tort feasor, cannot say that it would not be answerable to the claim made by the claimants on the ground that somebody or someone else has made payment of some amount to the claimants. *Qua* the claimants, the present appellant is a tort feasor and a tort feasor would not be allowed to take advantage of some compensation given by the third party.

6. Taking into consideration the totality of the circumstances, I am unable to hold that the learned Tribunal below erred in awarding a sum of Rs.3,90,000/- in favour of the claimants of First Appeal No.1855 of 1988.

7. So far as First Appeal No.1856 of 1988 is concerned, the learned Counsel for the appellant submitted that the deceased was survived by a major son of 22 years, a minor son of 15 years and the widow of 48 years. According to her, the dependency could not be assessed at Rs.1,000/- per month or Rs.12,000/- per year. It is submitted that the major son would not be entitled to any compensation because he would not be dependent on the father and the minor son would only be entitled to some compensation for a short period of three to five years

or upto the date when he starts earning.

8. True it is, that the elder son was 22 years of age and the younger son was of 15 years, but, it has not come on the records that the elder son started earning during the lifetime of his father and despite he being a major he was not dependent on the father. So far as the minor son is concerned, it is not known to anybody that whether at the time of the claim petition or at the time of the award, he was gainfully employed or was happily earning. So far as the widow is concerned, in the claim petition, she was shown to be of 48 years and if the claim of the widow alone is considered, then, the dependency of Rs.1,000/- in favour of the widow cannot be held to be on the higher side. The widow alone would be entitled to Rs.1,000/- per month or Rs.12,000/- per year. Under the circumstances, I am unable to hold that the learned Tribunal below was unjustified in awarding a sum of Rs.1,52,500/- in favour of the claimants.

9. Both the appeals deserve to and are, accordingly, dismissed. No costs.

[R.S.Garg, J.]

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